

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DARNELL MCGARY,

Plaintiff,

v.

KELLY CUNNINGHAM et al.,

Defendants.

CASE NO. C13-5130 RBL-JRC

ORDER ON MOTIONS FOR A
MORE DEFINITE STATEMENT

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and Magistrate Judge Rules MJR3 and MJR4.

Defendants ask the Court to grant two motions for a more definite statement (ECF No. 12 and 30). The majority of defendants filed the first motion (ECF No. 12). Defendant Lindquist filed the later motion (ECF No. 30). The Court grants the motions as stated below.

Before addressing the motion, the Court needs to identify which complaint is currently before the Court. Plaintiff's original complaint filed February 22, 2013, was replaced by plaintiff's amended complaint filed April 25, 2013 (ECF No. 10). Plaintiff's amended complaint

1 is properly before the Court because a party may amend their pleading once as a matter of
2 course. *See* Fed. R. Civ. P. 15(a)(1). To file any other complaint, plaintiff would need leave of
3 Court. *See* Fed. R. Civ. P. 15(a)(2).

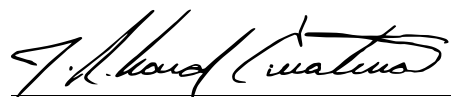
4 After defendants' first motion for a more definite statement had been filed, plaintiff filed
5 another complaint, (ECF No. 29). Plaintiff did not seek leave of Court to file the new complaint
6 and the new complaint is not properly part of this action. Thus the operative complaint at the
7 time of this order is the complaint filed April 25, 2013 (ECF No. 10).

8 The Court grants defendants' motions for a more definite statement because plaintiff
9 must provide defendants with information as to when the conduct that he alleges violated his
10 rights occurred. While plaintiff provides adequate information with regards to his allegations
11 against defendant Buder, (ECF No. 10 ¶ 4.11), plaintiff's amended complaint is conclusory and
12 vague regarding a time frame for the other defendants' alleged actions. Further, plaintiff should
13 provide enough facts to tie the alleged conduct to named defendants.

14 The Court orders that plaintiff submit a "second amended complaint" curing the defects
15 that are noted in this order. This second amended complaint will be due on or before August 16,
16 2013.

17 Defendant Lindquist has filed a motion to dismiss that is noted for August 9, 2013 (ECF
18 No. 34). The Court orders the Clerk's Office to remove this motion from the court's calendar in
19 light of this order. Defendants may file either an answer or any other pleading allowed by the
20 Fed. R. Civ. P. after the amended complaint has been filed.

21 Dated this 12th day of July, 2013.

22 

23 J. Richard Creatura
24 United States Magistrate Judge